

Emergencies Act – Order Relating to Financial Services

List of Questions and Issues

The CBA has initiated several workstreams under specialists groups (Legal, AML, Corporate Security and Communications) to support the industry's response to the actions taken by the government under the Emergencies Act. While we have not yet received the order relating to financial services, this is an ongoing list of questions and issues to be considered as we move forward.

1. **Effective Date and Implementation Timing.** While banks are conducting diligence and operationally preparing for the order, the general view is that it will not apply until passed. In the interim, banks will operate under existing rules and processes. Unlike sanctions, this involves new processes and should take into consideration an implementation/grace period.
2. **List of Names.** Preference is that banks be provided a specific list of names and individuals to search against. There are concerns with having to evaluate purposes of funds outside these specific connections or having to consider other possible connections or unofficial lists (ie. no twitter freezes).
3. **Scope of Impacted Customers.** We assume this only applies to recipients of donations and aggregators. If it is applicable to donors, presumably it would only be for donations above a threshold amount (eg. \$5k or \$10k). Otherwise a flood of customers may panic because they donated a nominal sum.
4. **Scope of Financial Services and Types Accounts.** What is the scope of “financial services”? Are we looking at funding accounts only? Presumably we are not freezing across the client relationship which would have complex implications in applying and significant unintended downstream implications. If funding accounts, consider what this list would be (chequing accounts, credit cards, LOCs/HELOCs, HISAs, brokerage accounts) and what this would not be (example, mortgage, RESPs, RRSPs, GICs or locked in accounts). In terms of freezing accounts, the accounts (e.g., chequing accounts, demand deposit accounts) may be used for essential purposes.
5. **Impacts of Freeze.** Does this impact outgoing payments only? Can banks receive payments? How long does a freeze last under the Order? Is it just the 30 days that the Act is in force, or does the freeze extend beyond that? What happens to the funds after the freeze is lifted (e.g., do the funds become available)?
6. **Bank Appeal Process and Will Flexibility Be Allowed.** Can banks make humanitarian or other exceptions/accommodations (e.g., UN Sanctions allow for bona fide payments to third parties or joint account holders – e.g., child care expenses/payments)? Consider example of spouse conducting inappropriate activity and impact on spouse who may a joint accountholder and is unable to cover basic necessities. What other basis of appeal

would apply? For example, inaccurate matches, pre-existing contractual obligations – supplier is owed funds (Iran Sanctions include this possibility). Consider common industry approach to this. Consider centralized approach to managing appeals.

7. **Communicate Freezes.** Will banks proactively communicate the freezes and right to appeal? Consider possible risks to frontline staff. Banks should be able to communicate the reasons for the freeze to the client (this may not be permitted for AML/ATF purposes – “tipping”). If banks are not permitted to disclose the reasons, banks will require protection, including for discovery purposes.
8. **Heightened Security Generally.** Consider possible backlash to banks.
9. **Jurisdiction and Role of Other Participants.** Confirm this applies to all financial institutions regardless of federally or provincially regulated. Are the payment networks impacted? Is the acquirer community impacted? Is merchant blocking expected? Monitor the potential impacts on banks.
10. **Other Regulatory Stakeholders.** Have OSFI, FCAC, OPC (privacy, sharing of information) and provincial regulators been briefed on this? What are their views?
11. **Immunity.** Is there confidence in the Federal Government’s ability to grant civil immunity on this? Would we also need provincial immunity? Would the immunity fail if there’s a successful Charter challenge? Should we be asking for an indemnity? Potential blocks to actions.
12. **Sharing of Customer and Account Information with Law Enforcement or between Financial Institutions.** For Law Enforcement, what will be the use of this information? Will there be AML changes in this area? Note: Potential impacts to existing processes – BCPIF.
13. **Cross border Implications.** Is Canada reaching out to other countries for support on this emergency action?
14. **Other AML Obligations.** Consider how this would interact with existing AML/ATF obligations.
15. **Ontario February 10th Restraint Order.** Is there any inter-relationship between these measures and the Ontario February 10th Restraint Order for GiveSendGo fundraising campaign pages (e.g., Freedom Convoy 2022, Adopt-a-Trucker, etc.)?

